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**COMMUNICATIONS CENTER, INC.**

Two Way Radio Equipment Sales & Service

SEP 29 1995

FCC MAIL ROOM

16218 Hwy. 190

P. O. Box 3247

Covington, LA 70434-3247

(504) 892-3539

FAX (504) 893-1282

September 28, 1995

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20054

DOCKET FILE COPY ORIGINAL

Re: Ex Parte Comments in PR Docket 93-144

Dear Sir or Madam:

On September 18th, 1995 the Commission informally announced an intent to auction 800 MHz SMR spectrum by overlaying existing authorizations with auctioned authority to operate within BEAs, thereby precluding existing operators from continuing a natural evolution of growth. The auction winner would be granted the right to force competing operators off the channels, first by forced frequency migration, then later by anticompetitive activity which would erode customer bases and opportunities. This would be an unprecedented regulatory action, resulting in oppressive activity by an agency of the federal government, charged with the public trust, and an abuse of government power. The clear abuse arises out of the federal government's unwarranted extinguishing of the value of existing business for improper purposes to raise money for the U.S. Treasury.

Extraordinary regulatory leeway has been granted by the Commission to Nextel, and its associates that were absorbed in the mergers and consolidations. The very rules that were crafted to prevent spectrum warehousing and anticompetitive activity were waived for their benefit. Their competitors, primarily small businesses, are now severely disadvantaged because this one company has gained channel holdings of monopoly size. Yet, despite Nextel's best efforts to chill the competitive opportunities of existing operators, those operators have continued to provide service to the marketplace and continue to hang on against the odds. Unable to overwhelm these small competitors in the marketplace, Nextel now seeks the Commission's assistance as Nextel's "button man." The Commission should realize that it is being improperly manipulated by Nextel and other parties supporting the proposed abuse of the Commission's authority, and steadfastly refuse to allow its procedures to be used in this manner.

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Despite the Commission's failure to demand that Nextel adhere to the strict tenets of the Commission's Rules, to assure that the waivers granted to Nextel did not result in a patently unfair competitive advantage, it appears that the Commission is prepared to acquiesce to Nextel's latest litany of demands — auction/frequency migration/limitations on growth and competitiveness. It is beyond doubt that the public will not be served by these intended actions. The public's enormous investment in mobile equipment will be rendered null and the Commission's intended actions do nothing to compensate adversely affected users. Yet, in the face of these obvious adverse effects, which are the natural consequence of the proposed rules, the Commission has still blithely continued toward the destruction of effective competition in the marketplace.

Left unchecked by reason and a recognition of the public interest, the Commission may soon understand how the overconcentration of market power will be used to control competition, reduce service alternatives, and raise prices for two-way radio dispatch equipment and service to the detriment of the public. The unfortunate truth is that the Commission's lesson will be learned too late to save the businesses of independent operators, whose livelihood will be sold at auction to pay for the Commission's tuition in this bitter learning experience for all.

Contrary to its authority granted by Congress, the Commission's actions attempt to effectively preempt antitrust law. Thus far, assuming that the FCC is acting within its mandate to serve the public interest in a manner which promotes or, at the least, does not restrict competition, the U.S. Department of Justice has not adequately questioned the FCC's decisions because of the technical nature of the regulations. However, that Justice has not yet performed its necessary functions in this area should not be interpreted as the "final word" on the propriety and legality of these proposals. We are willing to hope that upon further review, Justice will overcome its reluctance in this area and determine that the intended actions are improper.

We are encouraged by Justice's earlier finding of an anticompetitive environment in the Atlanta market and its forcing the divestiture of channels. This action should have raised flags all over the Commission. We believe that the Commission should not act in the mere hope that Justice doesn't later determine that the Commission's actions are wrong. Instead, it is incumbent on the Commission to assist the federal agency when it is charged with the duty of determining the anticompetitive effect on the market, and not attempt to usurp or supplant or undermine that duty.

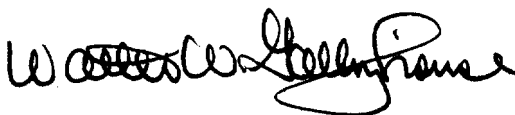
The government treatment of the spectrum and legitimate opportunities created by investment in that spectrum by independent businesspersons, as a commodity to be bundled and sold at auctions, has exacerbated the problem of artificial spectrum demand, leading to further warehousing of channels for speculative purposes. Nothing contained within the Communications Act suggests or allows the Commission to act in this manner, supporting the financial gains of proponents of monopoly practices without guarantee that the public will, indeed, receive valuable services. Certainly, the Commission cannot believe that spectrum presently being employed to serve the public is better suited for the

purpose of a speculative activity. Such justification for reallocation by forced frequency migration and auction is directly contrary to the agency's mandate.

Incumbent operators have already sustained devastating losses. Their business plans have been interrupted. New development is at a standstill. Prospects for growth have been all but eliminated. The FCC's freeze on 800 MHz licensing has restrained the growth of incumbents. The barrier of entry for incumbents who wish to acquire additional spectrum is impenetrable. If an auction plan unfolds, only large publicly traded companies will play. The incumbent won't even be able to ante up. No proffered justification which relies on the "old chestnuts" of administrative efficiencies or emerging technology can possibly hope to express valid reasons, much less credible excuses, for the injury suffered by incumbent licensees and which would be suffered by execution of the Commission's latest proposals.

Finally, it has been nearly two years since Nextel's associates approached me with an offer to buy my system. I was cordial then, despite the underlying threats of market dominance that were so much a part of Nextel's negotiation technique. However, I did not enter into an agreement with Nextel because I would have been breaking trust with my customers, whose continued use of their mobile equipment depends on either a faithful operator or logical alternatives. Nextel offered neither. Instead, it offered me cash to, in effect, exit the business over the backs of my customers. My integrity would not allow me to participate in this scheme then or now. The Commission should be similarly motivated and assure that my customers and my business are not injured by a competitor who seeks before the agency what it could not legitimately gain at the negotiating table.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Walter W. Gallinghouse". The signature is fluid and cursive, with the first name "Walter" being more legible than the last name "Gallinghouse".

Walter W. Gallinghouse  
Owner/President

cc: Senator John Breaux, Congressman Bob Livingston